

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

April 22, 2003

RESPONSIBLE STAFF:

Jennifer Russel, Director
Planning and Code Administration

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing 3/17/03
	Historic District
	Consent Item
	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	2/26/03
	3/5/03
Hearing Date	3/17/03
Record Held Open	4/14/03
Policy Discussion	4/22/03

TITLE:

T-357 --An Ordinance to Amend Chapter 24 of City Code (City Zoning Ordinance), Article VIII, Entitled, "Amendment Procedure," so as to create new Section 24-196.1, Entitled, "Grant of Zoning with Conditions--Authorized," to Authorize the Imposition of Certain Restrictions, Conditions, or Limitations Upon Zoning or Rezoning as Authorized Under Article 66B, Section 4.01 of the Maryland Code.

SUPPORTING BACKGROUND:

This text amendment was prepared by the City Attorney in response to a recent Maryland Court of Appeals decision that concluded that while municipalities in Euclidean zones could *not* impose conditions related to use in connection with a zoning approval, cities *can* impose conditional zoning on approvals with conditions that relate to design of buildings, landscaping or other improvements, alterations and change on the land. Article 66B Section 4.01 allows a municipality to take such action; however, the City must first grant itself the authority to do so under the provision of State law.

The subject text amendment accomplishes this by following the requirements of state law. The Planning Commission recommended approval of the amendment at their April 9, 2003 meeting.

There were three additions to the record: Exhibit #10—transcript of the public hearing, Exhibit #11—a letter received from BP Realty voicing opposition to the text amendment, and Exhibit #12—the Planning Commission's CPC. All are attached. The Mayor and Council's record closed on April 14, 2003.

DESIRED OUTCOME:

Amendment is on agenda for policy discussion, but is ready for adoption by the Mayor and Council.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE VIII, ENTITLED, "AMENDMENT PROCEDURE," SO AS TO CREATE NEW §24-196.1 ENTITLED, "GRANT OF ZONING WITH CONDITIONS – AUTHORIZED," TO AUTHORIZE THE IMPOSITION OF CERTAIN RESTRICTIONS, CONDITIONS, OR LIMITATIONS UPON ZONING OR REZONING AS AUTHORIZED UNDER ARTICLE 66B, §4.01 OF THE MARYLAND CODE

Text Amendment No. T-357

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that there is hereby enacted an amendment to Chapter 24, Article VIII, of the City Code to create new § 24-196.1, entitled "Grant of Zoning with Conditions – Authorized," to read as follows:

ARTICLE VIII. AMENDMENT PROCEDURE

Sec. 24-196.1. Grant of Zoning with Conditions – Authorized.

a) Upon the zoning or rezoning of any land, whether by local map amendment, comprehensive zoning or zoning of newly annexed land, the City Council is authorized to impose as part of such approval restrictions, conditions, and limitations upon the design of buildings and structures, landscaping or other improvements, alterations and changes made or to be made upon the land to be rezoned which the Council deems appropriate to preserve, improve or protect the subject property or adjacent lands and improvements.

b) Prior to approval of any zoning or rezoning with restrictions, conditions, or limitations, the City Council shall provide notice of public hearing as provided for in this Chapter for map amendments.

c) Any restrictions, conditions, and limitations imposed under this section shall be enforced by the City Planning Commission through the Site Development Plan approval provisions of Article V of this Chapter 24.

ADOPTED by the City Council of Gaithersburg, Maryland this 22nd day of April, 2003.

SIDNEY A. KATZ, MAYOR and
President of the Council

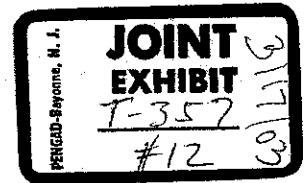
DELIVERED to the Mayor of the City of Gaithersburg, Maryland this 22nd day of April, 2003.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 22nd day of April, 2003, and the same was approved by the Mayor of the City of Gaithersburg on the 22nd day of April, 2003. This Ordinance will become effective on the 13th day of May, 2003.

DAVID B. HUMPTON, City Manager

COMMUNICATION: PLANNING COMMISSION



MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Jennifer Russel, Planning and Code Administration Director

DATE: April 10, 2003

SUBJECT: T-357 - Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article VIII, entitled, "Amendment Procedure," so as to create new §24-196.1 entitled, "Grant of Zoning with Conditions - Authorized," to authorize the imposition of certain restrictions, conditions or limitations upon zoning or rezoning as authorized under Article 66B, §4.01 of the Maryland Code.

At its regular meeting on April 9, 2003, the Planning Commission made the following motion:

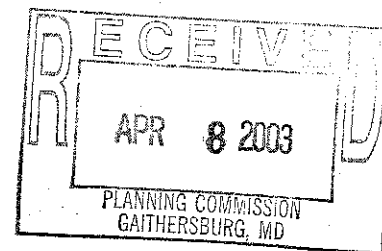
Commissioner Levy moved, seconded by Commissioner Winborne, to recommend Text Amendment T-357 for adoption to the Mayor and City Council.

Vote: 3-0 (Absent: John Bauer & Victor Hicks)

**BP REALTY INVESTMENTS**

April 8, 2003

Mayor and City Council
Planning Commission
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

**RE: Proposed Text Amendment T-357**

Dear Mayor, City Council and Planning Commission members:

We have received the proposed text amendment T-357 to amend Chapter 24 of the City Code (City Zoning Ordinance), Article VIII, Entitled "Amendment Procedure", so as to create new Section 24-196.1, entitled, "Grant of Zoning with Conditions-Authorized," to authorize the imposition of certain restrictions, conditions and limitations upon zoning and rezoning as authorized under Article 66B Section 4.01 of the Maryland Code. As you know, we are currently processing certain applications within the City, including Z-294, CSP-02-001, Z-278A and SDP-01-001.

The proposed text seeks to permit the City overly broad rights to "custom regulate" similarly zoned properties within the City, to be applied on properties on a piecemeal basis which are subject to zoning on either a local map amendment, comprehensive zoning action, zoning action of newly annexed land.

The case of *Mayor and Council of Rockville, et. al v. Rylyns Enterprises, Inc.*, addressed the issue of condition zoning of uses as relating to the annexation of a parcel of land into a City. The proposed language expands this opinion to far greater areas.

As importantly, the selective application of this proposed amendment T-357 to individual properties, including those subject to our pending and future applications, will violate proper planning and zoning purposes, will improperly impact private property rights as applied, and will lead to significant legal exposure to the City. We believe that the adoption of the proposed purpose and text of T-357 is ill-advised, and oppose it.

Best regards,


Peter Henry

CC: David B. Humpton, City Manager
Jody Kline, Esq.

10000 Falls Road, Suite 100, Potomac, Maryland 20854
(301) 299-2099 ♦ Fax (301) 299-2033

TRANSCRIPT OF
JOINT PUBLIC HEARING

ON

T-357

Application Requests Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article VIII, Entitled, "Amendment Procedure," so as to Create New §24-196.1 Entitled, "Grant of Zoning With Conditions - Authorized," to Authorize the Imposition of Certain Restrictions, Conditions or Limitations Upon Zoning or Rezoning as Authorized Under Article 66B, §4.01 of the Maryland Code

BEFORE THE
CITY OF GAITHERSBURG
MAYOR AND CITY COUNCIL
AND
PLANNING COMMISSION

ON

March 17, 2003

Transcribed by
Doris R. Stokes
March, 2003



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Edens
Council Member Alster
Council Member Marraffa
Council Member Schilchting
Council Member Somerset

PLANNING COMMISSION

Vice Chair Bauer
Commissioner Hicks
Commissioner Levy
Commissioner Winborne

CITY MANAGER

David B. Humpton

CITY ATTORNEY

Stanley D. Abrams

STAFF

Assistant City Manager Felton

Katz The next item on our agenda is public hearings. The first one obviously is a joint public hearing with the Planning Commission. And after Fred hands out name tags, he will be introducing this. Fred is a person of many jobs.

Felton Good evening. This is an ordinance to amend Chapter 24 of the City Code, Article VIII, entitled "Amendment Procedure," so as to create a new Section 24-196.1 entitled, "Grant of Zoning with Conditions – Authorized," to authorize the imposition of certain restrictions, conditions or limitations upon zoning or rezoning as authorized under Article 66B, Section 4.01 of the Maryland Code. This hearing was advertised in the *Gaithersburg Gazette* on February 26 and March 5, 2003. At the present time there are seven items in the record and these items may be reviewed at the Planning and Code Administration Office during normal business hours. This is really a very simple text amendment. The City Attorney was reviewing a Maryland Court of Appeals decision that did not relate to the City of Gaithersburg, but it did impose some limitations on powers of municipalities with conditions and zonings. Essentially, the Court held that a municipality in the Euclidean Zone which is not a floating zone, could not impose conditions related to land use in the rezoning. However, the Court did note or the City Attorney has noted that we can have conditions related to design of buildings, landscaping or other improvements. I'm just going to read one relevant provision of the text amendment and that will really be staff's presentation. The principle purpose of this amendment is to: upon the zoning and rezoning of any land, the City Council is authorized to impose as part of such approval restrictions, conditions, and limitations upon the design of buildings and structures, landscaping or other improvements, alterations and changes made or to be made upon the land to be zoned which the Council deems appropriate to preserve, improve or protect the subject property or adjacent lands and improvements.

Really I think the text amendment speaks for itself. This is staff's presentation. After we have heard from the public, we are recommending the Planning Commission hold their record open for fifteen (15) days and that the Mayor and City Council hold their record open for twenty-eight (28) days. And I will be pleased to answer any questions you may have.

Katz Thank you very much. Any questions of Fred? Thank you Fred. This is the time that the Mayor and Council and the Planning Commission hear from anyone who would like to speak on this public hearing topic. We ask that you please keep your remarks to no more than three minutes. Any additional testimony that you might have can be submitted to the City and will be a part of the record just as your oral testimony. Please state your name and address for the record. Do we have anyone that would like to speak on this topic? Fred you were so thorough, no one wants to speak. It has been suggested to the Planning Commission that they hold their record open for fifteen (15) days.

Bauer I guess that means that it's my job to ask the Commission to hold their record open for fifteen (15) days?

Katz I was wondering whose job that was (laughter).

Hicks Motion to hold the record open for fifteen (15) days.

Winborne Second.

Bauer It's been moved and seconded by the Planning Commission. All those in favor?

Commission Ayes (4-0)

Bauer It's 4-0 to hold the record open for fifteen (15) days.

Katz Very good. Thank you. And it's been suggested that the Mayor and Council hold their record open for twenty-eight (28) days.

Somerset I move to keep the record open on T-357 for twenty-eight (28) days.

Edens Seconded.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes (5-0)

Katz Opposed? Carries unanimously as well.

END OF JOINT PUBLIC HEARING
T-357